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3 **So Ordered.**



Patricia C. Williams
Patricia C. Williams
Bankruptcy Judge

4 **Dated: November 19th, 2012**
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8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF WASHINGTON

10 In re:

11 LLS AMERICA, LLC,

12 Debtor.

No. 09-06194-PCW11

13 _____
14 BRUCE P. KRIEGMAN, solely in
15 his capacity as court-appointed
Chapter 11 Trustee for LLS America,
LLC,

16 Plaintiff,

Adv. No. 11-80173-PCW

17 vs.

18 CROWN GOLD, INC.,

19 Defendant.

MEMORANDUM DECISION RE:
DEFENDANT CROWN GOLD, INC.'S
MOTION TO DISMISS (ECF No. 7)

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21 This adversary is one of hundreds commenced by the trustee of the LLS America,
22 LLC ("LLS America") bankruptcy estate which adversaries seek to recover money paid
23 by the debtor to certain lenders or investors as part of an alleged Ponzi scheme
24 conducted by the debtor. Defendant Crown Gold, Inc., filed a motion to dismiss on
25 December 16, 2011, ECF No. 7.

26 In a similar adversary, *Kriegman v. Cooper*, No. 11-80093-PCW, a written
27 decision was entered on July 2, 2012, ECF No. 146, regarding similar motions to dismiss
28 and an oral decision was rendered on May 24, 2012, ECF No. 118, on the issue of

MEMORANDUM DECISION RE: . . . - Page 1

1 pleading fraud with particularity (“Previous Decision”). The issues regarding dismissal
2 raised in the subject motion are the same as those raised in the Previous Decision. Many
3 of the facts in the Previous Decision are relevant to the subject motion.

4 By the affidavit of Duane Swinton (ECF No. 17), the trustee presented evidence
5 in this case that the defendant loaned or invested an unknown amount with either none
6 or an unknown number of promissory notes issued. In seven (7) distributions occurring
7 between August 2007 and March 2008, the defendant received \$150,300.20 (CAN). By
8 declaration (ECF No. 10), Marvin Toews, on behalf of the defendant, presented evidence
9 that it was formed under the laws of Canada, does not operate a business in the United
10 States, and to the extent that the defendant received any promissory notes, those
11 promissory notes listed Canadian entities as borrowers with distributions primarily made
12 from Canadian entities. The declaration further states that the loans or investments were
13 solicited in Canada, but no details were provided regarding the manner of solicitation.

14 The grounds for dismissal in the subject motion are: (1) ineffective service of
15 process; (2) improper extraterritorial application of United States bankruptcy law; and
16 (3) failure to state the alleged fraud with particularity as required by Fed. R. Civ. P.
17 (9)(b). The reasoning regarding the denial of dismissal based on those grounds is set
18 forth in the Previous Decision and applicable to the subject motion.

19 As in the Previous Decision, one basis for the request to dismiss is the lack of
20 personal jurisdiction. Unlike the situation in the Previous Decision, this defendant did
21 not file a proof of claim in the underlying bankruptcy case of LLS America. This
22 defendant did, however, seek affirmative relief in this adversary. As concluded in the
23 Previous Decision, by filing a motion to withdraw reference of this adversary to the
24 District Court for Eastern District of Washington, the defendant requested a
25 determination whether this court or the District Court had authority to enter final orders
26 in this adversary. That motion sought a ruling on a substantive legal issue. By requesting
27 a ruling on the merits of a legal issue in this case, the defendant has consented to the
28 exercise of jurisdiction by the federal courts of the Eastern District of Washington.

1 The defendant filing the subject motion had sufficient minimum contacts to
2 establish personal jurisdiction. Many of those facts in the Previous Decision are
3 applicable to the defendant in this case. This adversary complaint alleges that the
4 defendant knew or should have known it was participating in a Ponzi scheme. Unlike the
5 defendants in the Previous Decision, this defendant did not receive commissions, i.e.,
6 compensation for soliciting or locating other investors or lenders. However, the
7 economic activity in which the defendant engaged in was sufficient to establish
8 minimum contacts for personal jurisdiction. For these reasons, the motion to dismiss is
9 **DENIED**. Counsel for the defendant shall submit an order consistent with this decision.

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11 ///END OF MEMORANDUM DECISION///
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